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12 *successor trustee to Bank of America, N.A.,*
13 *successor in interest to LaSalle Bank N.A.,*
14 *on behalf of the registered holders of Bear*
15 *Stearns Asset Backed Securities I LLC,*
16 *Asset-Backed Certificate, Series 2006-HE8*

11 UNITED STATES DISTRICT COURT

12 DISTRICT OF NEVADA

13
14 JOSEPH EUGENE PIOVO, individually and as
15 Beneficiary of the Vice Roy United Nations
16 Credit and Commerce International Blind
17 Trust,

18 Plaintiff,

19 v.

20 ROBERT STONE; ANTONIETA TOVAR-
21 GUZMAN; MERSCORP, INC.; CBSK
22 FINANCIAL GROUP, INC.; U.S. BANK
23 NATIONAL ASSOCIATION, AS TRUSTEE,
24 SUCCESSOR IN INTEREST TO BANK OF
25 AMERICA, NATIONAL ASSOCIATION AS
26 SUCCESSOR BY MERGER TO LASALLE
27 BANK NATIONAL ASSOCIATION AS
28 TRUSTEE FOR CERTIFICATE HOLDERS
OF BEAR STERNS ASSET BACKED
SECURITIES I, LLC ASSET BACKED
CERTIFICATES, SERIES 2006-HE8; AND
ALL PERSONS CLAIMING BY, THROUGH
OR UNDER SUCH PERSONS UNKNOWN
CLAIMING ANY LEGAL OR EQUITABLE
TITLE, ESTATE, LIEN OR INTEREST IN
THE PROPERTY DESCRIBED IN THE

Case No. 2:13-cv-01922-APG-GWF

MOTION TO DISMISS FOR LACK OF
SUBJECT MATTER JURISDICTION

1 COMPLAINT ADVERSE TO PLAINTIFF
2 TITLE THERETO; Does 1-100, inclusive,
3 Defendants.

4 Pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, Defendant U.S. Bank
5 National Association, as successor Trustee to Bank Of America, National Association, successor
6 in interest to LaSalle Bank National Association, on behalf of the registered holders of Bear
7 Stearns Asset Backed Securities I, LLC, Asset-Backed Certificates, Series 2006-HE8, by and
8 through its undersigned counsel, hereby moves this Court to issue an order dismissing this action
9 for lack of subject matter jurisdiction over the claims set forth in "Plaintiff's Petition for
10 Declaratory Relief to Quiet Title Pursuant to NRS 40.010" (Dkt. # 1). This motion is made and
11 based on the following Memorandum of Points and Authorities, the exhibits attached hereto, and
12 all pleadings and papers on file herein.
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14
15 DATED: December 6, 2013.

PARSONS BEHLE & LATIMER

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17 By: /s/ Robert W. DeLong
18 Scott S. Bell, NV Bar No. 9507
Robert W. DeLong, NV Bar No. 10022

19 *Attorneys for Defendant U.S. Bank N.A.,*
20 *successor trustee to Bank of America, N.A.,*
21 *successor in interest to LaSalle Bank N.A.,*
22 *on behalf of the registered holders of Bear*
Stearns Asset Backed Securities I LLC,
Asset-Backed Certificate, Series 2006-HE8

23 **MEMORANDUM OF POINTS AND AUTHORITIES**

24 **I. INTRODUCTION:**

25 This action should be dismissed because Plaintiff Joseph Eugene Piovo's Complaint does
26 not demonstrate that the case arises under federal law. Accordingly, this Court lacks subject
27 matter jurisdiction over this dispute. The Complaint's sole jurisdictional allegation is that this
28

1 Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331. (Dkt. # 1 ¶ 13). Yet the
 2 Complaint makes no claims under federal law, and it never otherwise makes any allegations
 3 demonstrating that 28 U.S.C. § 1331 is applicable. In fact, the title of the complaint states that the
 4 case is brought “Pursuant to N.R.S. 40.010,” Nevada’s statute permitting actions to determine
 5 adverse claims to real property. Furthermore, the Prayer for Relief requests relief only under state
 6 law. There is simply no evidence before this Court indicating that jurisdiction under 28 U.S.C. §
 7 1331 is proper. Accordingly, the case should be dismissed with prejudice.

9 **II. DISCUSSION:**

10 **A. The Complaint Must be Dismissed Because there is No Federal Question** 11 **Jurisdiction Over the Quiet Title Claims Raised in the Complaint.**

12 Original jurisdiction exists in the federal courts over civil actions “arising under the
 13 Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. It is settled that for a case
 14 to “arise under” federal law, a plaintiff’s well-pleaded complaint must establish that either (1)
 15 federal law creates the cause of action, or (2) the plaintiff’s asserted right to relief depends on the
 16 resolution of a substantial question of federal law. *Franchise Tax Bd. of Cal. v. Constr. Laborers*
 17 *Vacation Trust for S. Cal.*, 463 U.S. 1, 27-28 (1983). “The presence or absence of federal-
 18 question jurisdiction is governed by the ‘well-pleaded’ complaint rule, which provides that
 19 federal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s
 20 properly pleaded complaint.” *Ethridge v. Harbor House Rest.*, 861 F.2d 1389, 1394 (9th Cir.
 21 1988). Furthermore, Rule 12(h)(3) of the Federal Rules of Civil Procedure requires a court to
 22 dismiss a case “[i]f the court determines at any time that it lacks subject-matter jurisdiction.”
 23 *Chaganti v. 12 Phone Int’l, Inc.*, 635 F. Supp. 2d 1065, 1070 (N.D. Cal. 2007).

24 The Plaintiff’s Complaint fails to allege any causes of action other than claims to quiet
 25 title to the property at issue. The quiet title claims raised by the Plaintiff arise from section 40 of
 26 the Nevada Revised Statutes, entitled “Actions to Determine Conflicting Claims to Real
 27
 28

1 Property.” There is nothing within the complaint demonstrating that the plaintiff is seeking
2 declaratory relief under anything other than Nevada state law. The title of the Complaint, the
3 causes of action, and the prayer for relief all reference and invoke Nevada’s statutory authority to
4 quiet title to real property. Accordingly, there are no grounds for this Court to exercise
5 jurisdiction, and the case should be dismissed.
6

7 **B. The Plaintiff Should be Treated No Differently Than Any Other Litigant**
8 **Before this Court.**

9 Plaintiff suggests that the standard of review for this case should somehow be altered
10 because he is appearing without the assistance of counsel. The Ninth Circuit requires *pro se*
11 litigants to be treated no differently from parties represented by counsel. *See King v. Atiyeh*, 814
12 F.2d 565, 567 (9th Cir. 1986) (*pro se* litigants “must follow the same rules of procedure that
13 govern other litigants”); *Jacobsen v. Filler*, 790 F.2d 1362, 1364 (9th Cir. 1986) (*pro se* litigants
14 “should not be treated more favorably than parties with attorneys of record”); *Carter v. Comm’r*
15 *of Internal Revenue*, 784 F.2d 1006, 1008 (9th Cir. 1986) (“Although *pro se*, [plaintiff] is
16 expected to abide by the rules of the court in which he litigates.”).

17 Here, the Complaint plainly fails to identify any federal question that must be resolved by
18 this Court. This case only raises claims arising under Nevada state law. Thus, the Complaint
19 should be dismissed even though it was presented by a litigant appearing *pro se*.
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1 **III. CONCLUSION:**

2 This action should be dismissed with prejudice pursuant to Fed. R. Civ. P. 12(b)(1)
3 because it is apparent from the claims asserted within the Complaint that this Court does not have
4 subject-matter jurisdiction over the matter.
5

6 DATED: December 6, 2013.

PARSONS BEHLE & LATIMER

7
8 By: /s/ Robert W. DeLong
9 Scott S. Bell, NV Bar No. 9507
Robert W. DeLong, NV Bar No. 10022

10 *Attorneys for Defendant U.S. Bank N.A.,*
11 *successor trustee to Bank of America, N.A.,*
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee with the law firm of Parsons Behle & Latimer, and that on the 6th day of December, 2013, I filed a true and correct copy of the foregoing MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION with the Clerk of the Court through the Court's CM/ECF system, which sent electronic notification to all registered users as follows:

Kent F. Larsen
Smith Larsen & Wixom
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Attorneys for Defendant
MERSCORP Holdings, Inc.

-and via U.S. Mail to the following:

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Plaintiff in Proper Person

/s/ Tracy L. Brown
Employee of Parsons Behle & Latimer